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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 390 (ALC)

5 DAVID TAYLOR,

Defendant.

Trial

6 -----x

7  
8 New York, N.Y.  
9 November 26 , 2018  
9:30 a.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the  
Southern District of New York

16 BY: KIERSTEN A. FLETCHER

JUSTIN V. RODRIGUEZ

17 NICOLAS T. ROOS

Assistant United States Attorneys

18 CHARLES F. CARNESI

19 Attorney for Defendant

20 Also Present:

21 Matthew Del Rosario, Special Agent DEA  
22 Rosanna Corrado, Paralegal Specialist

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1 (In open court)

2 THE COURT: Please be seated 10:10 a.m.

3 THE DEPUTY CLERK: Counsel, please state your  
4 appearance for the record.

5 MS. FLETCHER: Kiersten Fletcher, Justin Rodriguez and  
6 Nicolas Roos for the government.

7 THE DEPUTY CLERK: For defendant.

8 MR. CARNESI: Good morning, your Honor. Charles  
9 Carnesi for David Taylor. Judge, my apologies for the delay  
10 this morning.

11 THE COURT: Good morning.

12 Let's do a couple housekeeping matters and then we'll  
13 get on it with jury selection. First, let me make sure there  
14 is no update from the last time we were here regarding any plea  
15 offer.

16 Has any plea offer been extended by the government

17 MS. FLETCHER: No, your Honor.

18 THE COURT: Has any plea offer been requested by the  
19 defense?

20 MR. CARNESI: No, your Honor.

21 THE COURT: Has there been any Pimentel letter or  
22 request for Pimentel letter in this case?

23 MS. FLETCHER: No, your Honor.

24 MR. CARNESI: No, your Honor.

25 THE COURT: Mr. Taylor, have you discussed your

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1 options in terms of pleading guilty with your attorney? Have  
2 you discussed that? I don't want to get into the details of  
3 that, but have you discussed that with your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you satisfied with your legal  
6 representation up to this point?

7 THE DEFENDANT: Yes, I am, your Honor.

8 THE COURT: Has your attorney in fact informed you  
9 that the sentencing guidelines are advisory? What that means  
10 is although I am required to determine the guideline range that  
11 applies to your case, once I make such determination I am not  
12 required to sentence you within a particular guidelines range.

13 Do you understand?

14 THE DEFENDANT: Not quite.

15 THE COURT: Okay. Let me just check in with the  
16 government.

17 Is there a statutory minimum in this case?

18 MS. FLETCHER: There is not, your Honor.

19 THE COURT: Let me advise you again, Mr. Taylor or Dr.  
20 Taylor, the sentencing guidelines, have you and your attorney  
21 discussed the sentencing guidelines and how they might operate  
22 in your case?

23 THE DEFENDANT: No.

24 THE COURT: Counsel, would you like an opportunity to  
25 discuss the sentencing guidelines with your client?

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1           MR. CARNESI: Yes, Judge. I want a minute to refresh  
2 the doctor's recollection.

3           THE COURT: You may borrow my copy of the guidelines,  
4 counsel, if you want for the time being.

5           MR. CARNESI: Thank you.

6           THE COURT: I will be back.

7           (Pause)

8           THE COURT: So, defense counsel, did you speak to your  
9 client some more about the sentencing guidelines?

10          MR. CARNESI: Yes, I did, Judge. So the record is  
11 clear, we did not request a Pimentel letter because our  
12 Pimentel letter would have mirrored the letter that we did see  
13 for Vito Gallicchio. We knew what the government's position  
14 was regarding the amount of bills. But for a few minor  
15 changes, there was an enhancement in Mr. Gallicchio's Pimentel  
16 because of obstruction of justice, which would not have applied  
17 to the doctor; but conversely, it would be an enhancement for a  
18 special skills which would have applied to the doctor. That  
19 being said the Pimentel letter was beyond the statutory maximum  
20 for the crime.

21          THE COURT: Okay. These conversations that you had  
22 with Mr. Taylor, you had these conversations before today?

23          MR. CARNESI: Yes, Judge. We had them quite a while.

24          THE COURT: I what I want to make sure what Dr. Taylor  
25 understands, regardless of what you may have seen in a Pimentel

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1 letter that was intended for someone else, you and your  
2 attorney, have you discussed the sentencing guidelines and how  
3 they might apply in your case?

4 THE DEFENDANT: Yes.

5 THE COURT: I want to make sure that you understand  
6 that the sentencing guidelines are advisory, which means  
7 although I am required to determine the guidelines range --  
8 let's back up.

9 Whatever guidelines range you saw listed in a Pimentel  
10 letter or that your lawyer discussed with you is simply an  
11 estimate as to what the government thought or what your lawyer  
12 thought the guideline range would be.

13 Do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: I would make the ultimate determination as  
16 to what your guidelines range would be.

17 Do you understand?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Once I made that determination, I would  
20 not be required to sentence you within that guidelines range.

21 Do you understand?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Meaning that I could sentence you above or  
24 below the guidelines range that I determined.

25 Do you understand?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Now, I would not have the authority to  
3 sentence you above or below any statutory minimum or maximum  
4 term, but I would have the discretion within the statutory  
5 minimum and maximum in terms of the sentence that I impose if  
6 you were to plead guilty.

7 Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: Have you in fact discussed that with your  
10 lawyer?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Carnesi, you discussed that with your  
13 client?

14 MR. CARNESI: Yes.

15 THE COURT: Dr. Taylor, I want to make sure that you  
16 understand all of your rights before we continue with this  
17 trial. You have an absolute right to go to trial and we're  
18 about to proceed to trial.

19 Let me just ask you again, Dr. Taylor, is it your  
20 intention to go to trial?

21 THE DEFENDANT: Yes, your Honor.

22 (Continued on next page)

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1 THE COURT: Any further questions from the government  
2 on this topic?

3 MS. FLETCHER: No, your Honor.

4 THE COURT: OK. Anything else from the defense on  
5 this?

6 MR. CARNESI: No, your Honor.

7 THE COURT: OK.

8 There are a couple of outstanding motions I need to  
9 give you a ruling on regarding Witness 1 and Witness 2. You  
10 probably got a sense of where I was leaning on this, but I will  
11 give you my ruling on that.

12 I will not allow the government to introduce this  
13 evidence regarding Witness 1 or Witness 2 on their direct case.  
14 If the door gets opened, then we'll see what happens with that.  
15 But I will not allow the government to introduce that evidence  
16 on their direct -- well, on their case in chief.

17 If the door gets opened during the government's direct  
18 case, we will obviously deal with that, and that can come in  
19 during the timing of their direct case, but I am not going to  
20 let the government put that on in their case in chief.

21 Let's move on to one other thing. I have an updated  
22 list from the government regarding 66 names and places that may  
23 come up during the course of the trial. I want to make sure  
24 defense counsel has seen that and make sure there are no  
25 additional names or places I need to tell the jury about.

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1 MR. CARNESI: Not that I am aware of, Judge.

2 THE COURT: Counsel for the government, are there any  
3 other names on that?

4 MS. FLETCHER: No additions, your Honor. The  
5 government does have a couple of questions on the ruling your  
6 Honor just announced, whenever it is convenient.

7 THE COURT: OK. Sure. Let's go ahead and deal with  
8 that.

9 MS. FLETCHER: What in the Court's view would open the  
10 door? I understand your Honor to be ruling that Witness 1 and  
11 Witness 2 can't testify in our case in chief, meaning if the  
12 door were opened in our case in chief, we could call those  
13 witness as rebuttal witnesses.

14 THE COURT: Whatever label you want to put on them, if  
15 the door gets opened, that testimony may come in perhaps,  
16 depending on how the door is opened.

17 MS. FLETCHER: OK.

18 THE COURT: If it's opened in any way and at any time  
19 from defense counsel, if the door is opened based on defense  
20 counsel's opening statements, if it's opened based on defense  
21 counsel's questioning of witnesses, if it's opened on any  
22 testimony offered by the defense in their case in chief if they  
23 were to put forward a case, we would have to wait and see.

24 MS. FLETCHER: Understood. Sounds like we'll be  
25 discussing this at a later point.

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1 THE COURT: We may.

2 All right. Regarding those 66 names, there are a  
3 couple of pharmacies on that list. I just want to find out  
4 from the parties. There are a couple of CVS's, a Walgreen, and  
5 a Pathmark.

6 Just so I don't get a lot of hands because they  
7 recognize sort of the chain, it seems to me that it may be  
8 appropriate for me to say to the potential jurors, I am not  
9 asking if you're familiar with Walgreens in general, but I want  
10 to know if you're familiar with this particular Walgreens at  
11 this particular location.

12 Let me find out what counsels' view is on that.

13 MR. RODRIGUEZ: I think that's correct, your Honor.  
14 The reason they are on the list is we anticipate there will be  
15 some government exhibits which show a map with some of these  
16 specific pharmacies, and they will be pharmacies where members  
17 of the conspiracy had their prescriptions filled, but I think  
18 your Honor's inclination is entirely correct.

19 THE COURT: Defense counsel?

20 MR. CARNESI: That would be our position as well,  
21 Judge.

22 THE COURT: OK.

23 In terms of scheduling, I plan to tell the jury that  
24 this will take two and a half weeks. I think that may be a  
25 little longer than we may need.

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1 I am not going to be available on Monday, December 3  
2 so we will be off that day. So I want to make sure counsel  
3 know that so they can plan accordingly and plan the witnesses.  
4 I won't be here on that day. I will be here on all the other  
5 days.

6 Regarding the number of alternate jurors, I don't  
7 think we discussed this before. Let me get a sense from  
8 counsel as to what they think an appropriate number of  
9 alternates would be. It seems to me that, even though this  
10 isn't anticipated to be a particularly lengthy trial, based on  
11 the time of year that we're in, we are sort of in the middle of  
12 cold and flu season, it may make sense to have four alternates.  
13 I think we definitely need at least two. Let me hear what  
14 counsel's view is on that?

15 MS. FLETCHER: Our inclination was two to three. If  
16 your Honor wants to have four, we would be fine with that.

17 THE COURT: Defense counsel?

18 MR. CARNESI: Judge, leaning on the side of caution, I  
19 would request four.

20 THE COURT: All right. Let's try to have four  
21 alternates. Depending on how things go in jury selection, if  
22 we are stuck with just three, that is fine. I prefer four.  
23 The way jury selection will work is we'll need to qualify 36  
24 jurors. That means I will ask the jurors about their  
25 familiarity with these names and places. I will ask them

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1 questions that are intended to get to any challenges for cause.  
2 After we've done that, I will have counsel come in the back and  
3 we can discuss any challenges for cause.

4           Once that has all been resolved with those 36, for the  
5 regular jurors, the government has six peremptory challenges,  
6 the defense has ten. Those 16 challenges, assuming everyone  
7 uses their challenges, will take care of the first 28 jurors.  
8 Then the remaining eight jurors, there will be a total of four  
9 peremptory challenges. The government has two peremptory  
10 challenges, the defense has two peremptory challenges for those  
11 four, so that four plus four gives us the 36. You can go in  
12 any order, but we will go with the first 12 jurors who are not  
13 struck will be our jury, and then the next four will be the  
14 alternates.

15           Everyone clear on where we are with that?

16           MR. CARNESI: Yes.

17           THE COURT: OK. While we are talking about jury  
18 selection, what I plan to do is have the majority of the jury  
19 selection conducted in the courtroom. If a juror has something  
20 they want to discuss in private, then we will take the juror  
21 into the robing room, and counsel may come into the robing  
22 room, and we will have that discussion.

23           I guess, let me ask Defendant Taylor, give him a  
24 chance to discuss this with his lawyer, how you want to proceed  
25 about this.

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1           No federal court to my knowledge has ruled that it's  
2 structural error for a defendant to be precluded from being  
3 present when the jurors are discussing private matters in the  
4 robing room.

5           Let me break this down and speak in English here.  
6 What happens is, Mr. Taylor, there may be jurors, especially in  
7 a case like this, who want to discuss sensitive topics that  
8 they don't want to discuss publicly, perhaps their own  
9 struggles with drug addiction or family member struggles with  
10 drug addiction, things like that, that they will not want to  
11 discuss in public. So I would bring them into the robing room  
12 and the lawyers would be back there, your lawyer would be back  
13 there, and we would listen to this person discuss that or any  
14 other personal matter that might bear on their ability to be a  
15 fair juror in this case.

16           I would give you, if you wish, even though I don't  
17 believe I'm required to, I would give you the opportunity if  
18 you wanted to be present when those conversations are had.  
19 Again, you will be present for all the other, for 98 percent of  
20 the jury selection that's going to happen here.

21           If you want to come in the robing room in the back  
22 when these jurors are discussing these private matters that  
23 they don't want to discuss publicly, I will give you that  
24 option. But you should discuss that with your lawyer, because  
25 many jurors will feel uncomfortable being as forthright about

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1 these matters if the person on trial is there with them.

2 So you may want to talk to your lawyer about that and  
3 see if that's something you want to do. Again, your lawyer  
4 will be there. If at any point your lawyer wants to discuss  
5 any matter that's taken place in that robing room with you  
6 before we go on, I will certainly give him and you that  
7 opportunity.

8 All right. Is that clear?

9 THE DEFENDANT: Yes, it's clear, your Honor. As long  
10 as my lawyer is present, I'm comfortable with that.

11 THE COURT: OK.

12 So, to the extent that there is any right, you waive  
13 any right to be present when we are having these discussions in  
14 the sidebar about jurors and their private concerns in terms of  
15 jury selection, is that correct?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: OK.

18 Is there anything else we need to discuss before we  
19 get to jury selection from the government?

20 MS. FLETCHER: Your Honor, the only open issue is an  
21 issue that was the subject of some correspondence with the  
22 Court last week, the proposed statement of the case.

23 THE COURT: Yes. OK.

24 I have reviewed the parties' proposed statement of the  
25 case, and I sort of adapted something from both parties'

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1 submissions.

2 Let me just read to you what I have and see what  
3 counsels' view is on this. What I plan to say is: This is a  
4 criminal case alleging a conspiracy to distribute narcotics  
5 illegally. The government alleges that the defendant, David  
6 Taylor, who is a licensed physician, entered into an agreement  
7 with others to issue medically unnecessary prescriptions for  
8 oxycodone to patients for the purpose of obtaining oxycodone to  
9 sell to third parties who were not his patients. The defendant  
10 denies those allegations.

11 That sort of incorporates the concerns of both  
12 parties, I believe. I will read it again slowly.

13 This is a criminal case alleging a conspiracy to  
14 distribute narcotics illegally. The government alleges that  
15 the defendant, David Taylor, who is a licensed physician  
16 entered into an agreement with others to issue medically  
17 unnecessary prescriptions for oxycodone to patients for the  
18 purpose of obtaining oxycodone to sell to third parties who  
19 were not his patients. The defendant denies those allegations.

20 How does that sound to the government?

21 MS. FLETCHER: Your Honor, that proposal has the same  
22 clause that was in the defense proposal that the government  
23 took issue with. The clause that creates the issue is the  
24 clause that states that the patients were obtaining the  
25 oxycodone for the purpose of obtaining it to sell it to third

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1 parties or something to that effect.

2 The government's position and the law frankly is that  
3 the defendant need not know or suspect that that's the purpose  
4 for which the patient is obtaining the oxycodone. It is  
5 sufficient, if, for example, the patient is just obtaining the  
6 oxycodone because they had an addiction to oxycodone, so long  
7 as the government meets its burden of showing that the  
8 oxycodone was medically unnecessary as to that patient.

9 So, by including this language, the language about the  
10 purpose for which certain of these patients are obtaining the  
11 oxycodone from Dr. Taylor, it puts before the jury a burden  
12 that the government does not actually have to meet. The  
13 government need not prove, for example, that the object of the  
14 conspiracy with respect to Dr. Taylor was to get these patients  
15 oxy to sell to third parties.

16 THE COURT: OK. I think I understand your point.  
17 Your point is that for oxycodone to patients that there needs  
18 to be a greater clause between for the purpose of obtaining  
19 oxycodone, because I had meant that to say that the agreement  
20 with others to issue medically unnecessary prescriptions for  
21 the purpose of obtaining oxycodone to sell to third parties.

22 MS. FLETCHER: It's the "sell to third parties" part  
23 that is the issue. The patient need not sell the pills to a  
24 third party for that patient to receive medically unnecessary  
25 oxycodone. In fact, I expect at least one government witness

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1 will say that they took the majority of their pills, but that  
2 they did not have a medical need for the pills. They were  
3 instead addicted to oxycodone.

4 THE COURT: OK. Let me hear from the defense.

5 MR. CARNESI: Judge, I'm going to request that you  
6 read the statement as you did earlier. It is my belief in  
7 dealing with this case for over a year that that's always been  
8 the government's position regarding the idea that people were  
9 going to Dr. Taylor, getting prescriptions, and then diverting  
10 them to other individuals who were not patients. That's what  
11 this case was all about.

12 I know I have said this before, Judge. I have been  
13 very concerned about this from the beginning. I don't think  
14 it's a case that turns specifically and only on whether or not  
15 somebody is making a subjective opinion that the medication was  
16 not medically necessary. He was a licensed physician. He was  
17 the individual who was meeting with the patients. He was the  
18 person who these patients said whatever they said to him in  
19 order to get him to write the prescriptions.

20 To now turn that around and have some, as we've talked  
21 about before, if they want to have some medical expert come in  
22 and say, well, in my opinion that really wasn't the proper way  
23 to do this, that's not what this case is about. This case is a  
24 criminal case with very serious ramifications on his future.

25 I think that we should hold the government to the

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1 indictment that they originally returned, which clearly was  
2 about these individuals, Gallicchio, the pharmacist, other  
3 people in there who were selling their oxycodone prescriptions  
4 so that they could be redistributed on the street.

5 We can defend that case. That is a very defensible  
6 case. The idea that this case is somehow going to devolve  
7 into --

8 THE COURT: I understand. That is not really the  
9 standard, whether it's an easily defensible case. Let me just  
10 hear a little bit more from the government, making sure I fully  
11 understand what your concern is, because, yes, my reading of  
12 the indictment was that your theory is that Dr. Taylor entered  
13 into an agreement with others, in particular, Vito Gallicchio,  
14 and others that he was going to issue medically unnecessary  
15 oxycodone with the understanding that this would be distributed  
16 to others.

17 Is that not a fair reading of the indictment?

18 MS. FLETCHER: Yes and no, your Honor. I mean, the  
19 issue here I think is that Mr. Carnesi wants to be able to  
20 stand up before the jury and argue that his client should be  
21 acquitted because the government has failed to meet its burden  
22 that Dr. Taylor knew that these patients were selling their  
23 oxycodone to third parties.

24 I think that's why he's saying that is a defensible  
25 case. That's the argument that he would like to make. If the

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1 instruction that your Honor gives at the very beginning of this  
2 case is essentially that the purpose of the conspiracy is to  
3 allow these patients to sell oxycodone to third parties, what  
4 that will do is have the effect of heightening the government's  
5 burden beyond what the law actually states the burden to be.

6 I mean, as the government has put forth in its letter  
7 dated November 19 and in its request to charge, for a doctor to  
8 be found guilty of conspiring to distribute narcotics as  
9 charged in the indictment, it is sufficient if the government  
10 introduces evidence that that defendant agreed to distribute  
11 medically unnecessary oxycodone, period. He need not have any  
12 information about what the purpose of that medically  
13 unnecessary oxycodone was vis-a-vis his patient.

14 Now the government will introduce evidence at this  
15 trial that certain of the patients did divert their prescribed  
16 oxycodone to Vito Gallicchio and to others, but the point the  
17 government is making here is it is not required that we prove  
18 that. It's evidence that the oxycodone is medically  
19 unnecessary, that some of these patients were diverting it, and  
20 that the doctor knew it. But if the government fails to prove  
21 that the doctor knew that patients were selling oxycodone, but  
22 succeeds in proving that the oxycodone prescriptions were  
23 medically unnecessary, we will have satisfied our burden, and  
24 the jury should understand that that is all they need to know  
25 to convict.

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1 THE COURT: What's the government's position on Vito  
2 Gallicchio in this conspiracy? What is your position on  
3 Gallicchio and what his role is here.

4 MS. FLETCHER: He is essentially the recruiter. He  
5 recruits patients to go and see the doctor so that they can  
6 obtain oxycodone from the doctor with the understanding that --  
7 the arrangement differs depending on who the patient is, but  
8 with the understanding either that the patient is getting  
9 oxycodone to sell to Vito --

10 THE COURT: I'm sorry. There was a cough in the  
11 middle. The patient is?

12 MS. FLETCHER: The patient is getting oxycodone to  
13 sell to Vito or that the patient is getting oxycodone to take  
14 to feed their own addiction, and they are compensating Vito for  
15 referring them to the doctor. In some instances they're  
16 compensating Vito by diverting some of their oxycodone.

17 But at least one patient -- for example, your Honor,  
18 Michael Farley is one of the individuals who Mr. Gallicchio  
19 recruits to see the doctor. Michael Farley in the beginning is  
20 recruited by his friend Vito Gallicchio to go and see the  
21 doctor, but does not, at least initially, kick back any of the  
22 oxycodone that he obtains from his prescriptions to Vito  
23 Gallicchio. The prescriptions to Mr. Farley are medically  
24 unnecessary prescriptions from day one, even though he is not  
25 subsequently diverting them.

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1           THE COURT: OK. But it seems that the government's  
2 theory in all of these cases is that, in terms of Gallicchio  
3 and his role in this conspiracy vis-a-vis Taylor, is that  
4 Gallicchio is the recruiter and Gallicchio is being compensated  
5 and that Taylor is being compensated, correct?

6           MS. FLETCHER: Yes. So Taylor is being compensated in  
7 two ways: First, by receiving cash and gifts from Vito  
8 Gallicchio around others; and, second, through his receipt of  
9 cash payments for office visits by the various patients that  
10 Mr. Gallicchio sent to see him.

11          THE COURT: OK. Hold on a second.

12          Does it answer the government's concern and the  
13 defense's concern if, instead of "an agreement with others to  
14 issue medically unnecessary prescriptions," that it's "entered  
15 into an agreement with others to sell medically unnecessary  
16 prescriptions for oxycodone," period?

17          MS. FLETCHER: I'm sorry. Because I am not looking at  
18 the language, it's hard for me follow.

19          THE COURT: Yes. If I were to say instead, the  
20 government alleges that the defendant, David Taylor, who is a  
21 licensed physician, entered into an agreement with others to  
22 sell medically unnecessary prescriptions for oxycodone.  
23 Instead of simply issuing them, that he's getting a profit for  
24 this in a different way than perhaps a regular profit from  
25 issuing medically unnecessary oxycodone?

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1 MS. FLETCHER: I think the use of the word "sell"  
2 implies that he has to be paid. In fact, he doesn't. I mean,  
3 if he's issuing medically unnecessary oxycodone to patients  
4 referred to him by Vito because Vito is his friend, that's  
5 sufficient. And we do expect there will be significant  
6 evidence of the friendship between the two.

7 I realize we're arguing, your Honor, about a couple of  
8 lines here, but this really is what in the government's view is  
9 the central issue in this case. Mr. Carnesi, to his credit I  
10 think, has identified a way to make this case appear to the  
11 jury to be something other than it is in an effort to move away  
12 from the standard that applies to doctors in these cases, and  
13 it's important that the first sentence that the jury hears  
14 about this case is one that accurately reflects the law.

15 THE COURT: OK. Let me hear from Mr. Carnesi a little  
16 bit more.

17 Let me just ask you, Mr. Carnesi, because again I took  
18 very seriously your concerns about not turning this trial into  
19 a trial simply about whether or not this is good medical  
20 practice. The more I'm --

21 MR. CARNESI: Thank you, Judge. I appreciate that.

22 THE COURT: -- looking at this and chewing on this, it  
23 does seem to me, especially since this is a conspiracy charge,  
24 perhaps the fact that there's the statement indicating that  
25 Dr. Taylor entered into an agreement with others to issue

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1 medically unnecessary prescriptions for oxycodone sort of  
2 alleviates or mitigates the concern that this case is simply  
3 about a doctor doing things that other doctors wouldn't do. If  
4 he's entering into an agreement with someone else to prescribe  
5 medicine, it does seem that this takes this now out of the  
6 realm of just a doctor performing his job in a slightly  
7 different way than another doctor might.

8 MR. CARNESI: Right.

9 THE COURT: What is your counter to that?

10 MR. CARNESI: I think that that goes to some measure  
11 to alleviate the concern, Judge. I also think if you are going  
12 to use the term medically unnecessary, I think it's incumbent  
13 to say to issue prescriptions he knew to be medically  
14 unnecessary. The difference I have is one person coming in --  
15 then we're getting back into the battle of the doctors. One  
16 person coming in and saying, no, it really wasn't necessary,  
17 and the doctor, who is equally qualified with the same medical  
18 schools, is licensed by the same licensing authorities, is of  
19 the opinion that it was. In this situation, Judge, the  
20 testimony is going to be that patients intentionally lied to  
21 the doctor.

22 THE COURT: I understand.

23 It seems to me that those concerns will be dealt with  
24 during the final charge to the jury when the jury gets the  
25 instructions on the necessary knowledge for a conspiracy. They

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1 will get that information. All we're trying to do right now is  
2 give the jurors a brief synopsis of this case so that they will  
3 have an idea of what this case is about so that they can figure  
4 out whether or not they have a problem sitting on this case.

5 MR. CARNESI: I think that it is a good idea. I think  
6 having a statement like that is a good idea. But I think it  
7 should be as accurate as possible, and it does require the  
8 element of knowledge on his part. The fact that it is going to  
9 be an instruction that's going to be given to them after they  
10 have heard all of the evidence I don't think really addresses  
11 the idea and the very purpose of the statement so they have a  
12 clue as to what it is that they are looking for.

13 THE COURT: I understand that. But I don't think that  
14 the jury is going to be -- again, this is just to give them a  
15 synopsis of the case so they can figure out whether or not they  
16 can be fair and impartial. I don't think they are going to be  
17 misled during the course of the testimony here, because it is  
18 my sense that the government's theory -- not even just my  
19 sense -- the government's theory is not that Dr. Taylor was  
20 simply a little bit off, was not quite as careful and  
21 deliberate as he should have been. Their theory is that he's  
22 doing this intentionally.

23 So I understand that, but I will give them -- anything  
24 else? My intention is just to tell them, again, this is a  
25 criminal case alleging a conspiracy to distribute narcotics

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1 illegally. The government alleges that the defendant, David  
2 Taylor, who is a licensed physician, entered into an agreement  
3 with others to issue medically unnecessary prescriptions for  
4 oxycodone. The defendant denies those allegations.

5 MS. FLETCHER: Fine.

6 THE COURT: Anything else from defense counsel on  
7 that?

8 MR. CARNESI: Nothing beyond what I have said, Judge.

9 THE COURT: OK. So I will give the jury that  
10 description of the case.

11 Anything else before we start jury selection?

12 MR. CARNESI: Judge, I have one scheduling matter that  
13 I would like to discuss.

14 THE COURT: Yes. What is that.

15 MR. CARNESI: I have a personal issue that I would  
16 like to be able to take care of on December 5.

17 THE COURT: OK.

18 MR. CARNESI: It is not something I would prefer to  
19 discuss in open court.

20 THE COURT: That is fine. What time is that? Is it  
21 something that would require the entire day? What are we  
22 talking about.

23 MR. CARNESI: I think it probably will. It would  
24 probably start around 10:30 and at least go until 1 o'clock.

25 THE COURT: Without getting into the details, is this

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1 something, now that you know that we will not be sitting  
2 December 3, that can be scheduled for December 3 instead of  
3 December 5?

4 MR. CARNESI: It is not something that is in my  
5 control.

6 THE COURT: OK.

7 You are saying it would start at 10:30?

8 MR. CARNESI: I think, yes.

9 THE COURT: And go until 1 o'clock?

10 MR. CARNESI: Yes.

11 THE COURT: Like how soon could you get back?

12 MR. CARNESI: Just on the other side of the bridge,  
13 Judge.

14 THE COURT: That seems fine with me. We are giving a  
15 little bit of leeway in this two-and-a-half-week schedule  
16 anyway. We'll let the jurors know that. Perhaps that will  
17 maybe help the jurors out, that they know that there are two  
18 days in case and if there are matters that they need to handle,  
19 on the 3rd and the 5th they can do that.

20 Let me hear from the government.

21 What is your view on that?

22 MS. FLETCHER: That is fine with the government.

23 THE COURT: That is fine. We will take off the 3rd  
24 and the 5th we'll let the jurors know that today so we can give  
25 them a sense of the schedule.

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1 Anything else?

2 MS. FLETCHER: On the 5th we could also sit in the  
3 afternoon if that's convenient for the Court, if the Court  
4 doesn't want to give them the entire day off. We could just  
5 start later.

6 THE COURT: We could. We could do I guess like 2 to  
7 5.

8 MR. CARNESI: Judge, again --

9 THE COURT: I am not sure how.

10 MR. CARNESI: -- I don't have control over it. I  
11 estimate that it will be done by 1 o'clock.

12 THE COURT: Yes. That's fine. I understand. I think  
13 we can miss that day and hopefully --

14 MR. CARNESI: Thank you.

15 THE COURT: -- we can just keep things moving.

16 Again the jurors, especially the ones who are coming  
17 from Westchester County and the other northern counties, will  
18 appreciate getting out of here relatively early, especially at  
19 this time of year, when we have increased snow, cold weather,  
20 all sorts of issues with Metro-North, MTA and everything else.

21 Anything else before we start jury selection?

22 MS. FLETCHER: Can we have one moment, your Honor.

23 THE COURT: Sure.

24 MS. FLETCHER: Your Honor, the government has one  
25 scheduling issue.

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1 THE COURT: OK.

2 MS. FLETCHER: But we think it probably makes sense to  
3 raise it with your Honor at the end of the day today once we  
4 see where we are.

5 THE COURT: OK.

6 MS. FLETCHER: It may solve itself depending on how  
7 jury selection goes.

8 THE COURT: OK. Is this with the expert or somebody  
9 else?

10 MS. FLETCHER: It is with the expert.

11 THE COURT: OK.

12 Another thing: My law clerk just reminded me, there's  
13 this issue about *Brady* and a witness and immunity that was  
14 mentioned before.

15 Where are we with that? Is there any update regarding  
16 that?

17 MR. CARNESI: Judge, I have since had the opportunity  
18 to review all the 3500 material. I think I can resolve the  
19 issue.

20 THE COURT: OK. Meaning what?

21 MR. CARNESI: Meaning I believe the information that I  
22 deem to be necessary will be able to be brought out through  
23 other witnesses.

24 THE COURT: OK.

25 MS. FLETCHER: Your Honor?

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1 THE COURT: Yes.

2 MS. FLETCHER: Just so long as it's clear that if what  
3 Mr. Carnesi is going to seek to do is to elicit from witnesses  
4 what this woman, Denise Suarez, told those witnesses, the  
5 government will object on hearsay grounds.

6 THE COURT: Maybe, just to deal with this quickly now,  
7 it seems to me, my recollection of what defense counsel wanted  
8 to elicit from this witness was something to the effect that  
9 this witness received some bribes in order to not send people  
10 in order to not collect urine samples or to send things for  
11 urinalysis, something to that effect. Is that right?

12 MR. CARNESI: That's right.

13 MS. FLETCHER: That's correct.

14 MR. CARNESI: That's it, as well as certain other  
15 acts.

16 THE COURT: OK. So I guess just preemptively, so we  
17 can maybe move this along and not have a prolonged argument  
18 about it later, why wouldn't that be a statement against  
19 interest?

20 MS. FLETCHER: I'm sorry, your Honor.

21 THE COURT: In terms of a hearsay exception, a  
22 statement against that witness's interest. It's against that  
23 witness's pecuniary interest to make a statement confessing to  
24 a crime. That is an exception to the hearsay rule if the  
25 witness is unavailable.

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1 MS. FLETCHER: Your Honor, as the government  
2 understands the facts --

3 THE COURT: Yes.

4 MS. FLETCHER: -- it is not clear that it is a  
5 statement against her interest. What she said was that she  
6 accepted payments from patients in exchange for her agreement  
7 not to submit their urinalysis nor testing, but that she did  
8 not in fact divert any of the urinalysis samples for any of the  
9 patients recruited by Gallicchio because those urinalysis  
10 samples did not need to be diverted.

11 So, it is not clear to me that her statement is in  
12 fact against her interest as relevant here. She may have  
13 accepted bribes from patients separate and apart from this  
14 particular scheme.

15 THE COURT: But that's still against her penal  
16 interest. It's against her interest. Whether or not it's part  
17 of this alleged conspiracy, it seems to me to be a statement  
18 against her interest at the time that it's made. To admit to  
19 engaging in such behavior is a statement against interest. You  
20 can look at this and think about it. We can get into later  
21 whether or not there are other statements that would need to  
22 come out with that. I don't know. But, just as I thought  
23 about that, that's just what my initial thinking was about  
24 that.

25 MS. FLETCHER: OK.

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1           THE COURT: We can deal with that. At least maybe  
2 that gives counsel some starting place.

3           MS. FLETCHER: It does. Thank you.

4           THE COURT: Unless counsel, maybe defense counsel had  
5 some other --

6           MR. CARNESI: No, Judge. I believe it fits squarely  
7 within the 807 residual exception. Clearly it is a statement  
8 against interest. It's made in the context of a proffer where  
9 lying to the FBI would have been an additional crime. It is in  
10 a position where the issue, the problem of hearsay may  
11 generally be the inability to cross-examine the witness. Well,  
12 here the government had full exposure to this witness.

13          THE COURT: OK. We can table this. Let's go ahead  
14 and start getting these jurors in here so we can start with  
15 jury selection.

16          Let me get a sense of how short counsel's anticipated  
17 opening statements would be?

18          MS. FLETCHER: Mine should be about ten minutes, your  
19 Honor.

20          THE COURT: Defense counsel?

21          MR. CARNESI: I think that's about right, Judge. 10,  
22 15 minutes.

23          THE COURT: OK. Let's bring the jury in. It will  
24 take a while for them to come over. Let's bring all the jurors  
25 over.

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Opening - Ms. Fletcher

1 MR. CARNESI: Judge, I am just going to step out and  
2 use the restroom.

3 THE COURT: OK.

4 (Recess)

5 (A jury of twelve and four alternates was duly  
6 selected and sworn)

7 THE COURT: Thank you for your patience.

8 Congratulations. You have been chosen as jurors on  
9 this case. We are going to now proceed with opening statements  
10 by counsel. What counsel say in the opening statements, that  
11 does not constitute evidence, but you should still pay  
12 attention to what counsel say in the opening statements. They  
13 are going to attempt to give you an overview of what they  
14 believe the evidence in this case will show.

15 We will start off with opening statement by the  
16 government.

17 MS. FLETCHER: Your Honor, may I move that small  
18 podium?

19 THE COURT: Yes.

20 MS. FLETCHER: This is a case about a drug dealer, not  
21 a drug dealer who stands on the street corner or meets  
22 customers in an alleyway, a drug dealer disguised in a white  
23 coat, a drug dealer with a prescription pad, a doctor.

24 For years this man, the defendant, David Taylor,  
25 prescribed a powerful and highly addictive painkiller to

ibqntay2

Opening - Ms. Fletcher

1 patients he knew did not need it. He did it for cash, and he  
2 did it for the gifts that his drug dealer patients showered him  
3 with.

4 The painkiller the defendant illegally prescribed is  
5 called oxycodone. It is an opioid drug similar in makeup to  
6 heroin.

7 Now, this drug is highly addictive. Addicts on the  
8 street are willing to pay as much as \$20 per pill. It's this  
9 addictive power that the defendant counted on and he exploited.

10 Here's how the defendant's crime worked: The  
11 defendant had an arrangement with a shameless drug trafficker  
12 named Vito Gallicchio. Vito supplied the defendant with a  
13 steady stream of phony patients who were willing to pay cash  
14 for oxy prescriptions. The defendant knew these patients had  
15 no medical need for oxy, but he didn't care. He cared about  
16 what was in it for him. He cared about the cash payments and  
17 the gifts that Vito and his crew gave him, gifts like expensive  
18 single-malt Scotch, cigars, a television, and a refrigerator.

19 That's why we're here today, because it is a federal  
20 crime for a doctor to prescribe oxycodone, an addictive  
21 narcotic, to people that he knows do not need it. That's  
22 exactly what the defendant did for years. He turned his  
23 doctor's office into a drug den.

24 Over the next few minutes I will talk about what the  
25 evidence will show in this case. Then I will walk you through

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Opening - Ms. Fletcher

1 some of the different types of evidence the government will  
2 introduce to prove its case.

3 I expect you will learn that the defendant was a  
4 licensed medical doctor who operated out of several offices in  
5 Staten Island, New York. He was an internist who sometimes  
6 claimed to be practicing in the area of medicine known as pain  
7 management. As you will learn during this trial, legitimate  
8 pain management medicine is devoted to the treatment of  
9 patients suffering from severe and sometimes chronic pain  
10 patients, like cancer patients or people recovering from a  
11 serious debilitating injury.

12 You will learn that legitimate pain management  
13 involves a wide range of treatments, like physical therapy and  
14 in some cases pain medication. That is legitimate pain  
15 management, but that is not the way the defendant ran his  
16 medical practice.

17 The defendant's operation focused on one medication,  
18 oxycodone, a medication that should be used to treat only the  
19 most serious types of pain. You will learn that because  
20 oxycodone is such a powerful drug that people become addicted  
21 to it. They abuse it. They buy it and sell it on the street  
22 just like heroin or cocaine or other drugs. Because of that,  
23 oxycodone is also highly regulated. You can only get it  
24 legally from a pharmacy if you have a prescription for it from  
25 a doctor for a legitimate medical condition.

1           During this trial, you will hear about how the  
2 defendant's medical practice is anything but legitimate. The  
3 defendant violated the law and joined forces with a drug dealer  
4 named Vito Gallicchio. Vito recruited a crew of people, family  
5 and friends who would pose as patients, go and see the  
6 defendant, and collect oxycodone prescriptions that Vito would  
7 then fill and sell on the street.

8           If any of Vito's recruits had trouble getting into the  
9 door, they would just drop Vito's name or Vito would call the  
10 doctor and the person would be seen, no questions asked.

11           You will learn what happened inside the defendant's  
12 examination room. Each visit lasted only a few minutes. The  
13 defendant didn't conduct any physical examinations. He barely  
14 spoke to the patients about their health. He barely asked them  
15 anything about their pain. He didn't require the patients to  
16 provide updated tests like MRIs to prove that they actually  
17 needed the drug that he was prescribing them, and he never  
18 explored alternative pain management methods, like physical  
19 therapy or like less serious drugs.

20           Instead, during these visits, the defendant just put  
21 his head down, kept writing and writing prescription after  
22 prescription month after month year after year for people he  
23 knew didn't need it.

24           The defendant is not on trial here because he was a  
25 bad doctor or because he was careless. He's on trial because

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Opening - Ms. Fletcher

1 his medical practice was a pill mill, for anyone connected to  
2 Vito or who gave the doctor gifts would get an oxy  
3 prescription.

4 You will learn during this trial that the defendant  
5 was careful. He was worried about getting caught, so he took  
6 steps to cover his tracks.

7 He wrote bogus notes in his patient charts. He wrote  
8 down fake results of examinations that never happened, of  
9 things that patients never said to him. He prescribed patients  
10 additional medications along with the oxycodone to try and mask  
11 his crimes.

12 He buried drug tests that revealed his patients had  
13 not taken the oxycodone he prescribed, a clear sign that these  
14 patients didn't need the pills. You will see that the patients  
15 that Vito sent to the defendant's medical office weren't  
16 patients at all. They were drug dealers, and the defendant was  
17 the supplier.

18 The defendant gave the patients, the so-called  
19 patients their oxycodone, oxycodone that the patients took back  
20 to Vito for Vito to sell on the street or that the patients  
21 took themselves to feed their own oxycodone addictions. These  
22 so-called patients paid the defendant cash every month,  
23 sometimes several times a month for years, and Vito made side  
24 payments to the defendant, his partner, to keep the operation  
25 going.

ibqntay2

Opening - Ms. Fletcher

1           You will hear how Vito bragged to members of his crew  
2           that he paid the defendant \$5,000 in cash and paid the rent on  
3           the defendant's medical office. You will hear how the  
4           defendant accepted gifts, gifts like the single-malt Scotch,  
5           the cigars, and the appliances I mentioned before. You will  
6           see that Vito and the defendant were partners in crime for  
7           years and that from January of 2012 and June of 2017 they  
8           flooded the streets of New York and New Jersey with hundreds of  
9           thousands of oxycodone pills.

10           Cash and gifts for oxy; that was the deal. And that's  
11           what this case is about.

12           So how will the government prove its case?

13           You will see and hear many different types of evidence  
14           in this case.

15           First, you will hear from witnesses. You will hear  
16           from an expert, a doctor who helped design the pain management  
17           practice at NYU Medical Center here in Manhattan. He will tell  
18           you how legitimate pain management medicine works, and he will  
19           tell you flat out that there was nothing legitimate about what  
20           the defendant prescribed for Gallicchio and the members of his  
21           crew.

22           You will also hear from a pharmacist who was in on the  
23           scheme, who agreed to serve as a clearing house for the illegal  
24           prescriptions that the defendant wrote and to fill the  
25           defendant's prescriptions no questions asked.

ibqntay2

Opening - Ms. Fletcher

1           He will tell you that even he knew that these  
2       prescriptions were not medically necessary. You will also hear  
3       from some of the defendant's phony patients, including some  
4       members of Vito's crew. They will tell you how the scheme  
5       worked, about the bogus, nonexistent exams the defendant  
6       performed before he prescribed huge amounts of oxycodone for  
7       months, even years, that they did not need.

8           They will lay out for you how they obtained their  
9       pills and what they did with them. They will discuss the money  
10      and the gifts that the defendant demanded to keep the operation  
11      running.

12          One witness will tell you about a time he was sitting  
13      in the waiting room in the defendant's office, the crowded  
14      waiting room waiting with other would-be patients and some of  
15      the patients started arguing. He will tell you about how the  
16      defendant came out of the exam room and yelled at his patients:  
17      "Every one better shut up or no one gets anything."

18          When you hear this, you will know that the defendant  
19      knew exactly why these patients were there -- to get oxycodone  
20      and nothing else.

21          Now, let me be clear. The pharmacist and these  
22      patients, they have committed crimes. Some of these witnesses  
23      are oxycodone addicts. Others are people who broke the law to  
24      make money. They committed crimes right alongside the  
25      defendant.

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Opening - Ms. Fletcher

1           They will be testifying before you because they have  
2 agreed to cooperate with the government, so you should keep  
3 that in mind when you evaluate their testimony. Ask yourself  
4 whether their testimony is consistent with and supported by all  
5 of the other evidence in this case. When you do that, you will  
6 see that what these witnesses tell you is corroborated by all  
7 of the other evidence, evidence like recordings taken from  
8 inside the defendant's examination room, recordings that will  
9 allow you to see inside the defendant's corrupt practice of  
10 medicine.

11           These recordings, which were made at the direction of  
12 law enforcement, will tell you everything that you need to know  
13 about how the defendant operated when he saw patients. In  
14 these recordings you will see the patients hand over cash or  
15 gifts like Scotch to the defendant. You will see the defendant  
16 with your own eyes perform almost no examination. In one  
17 recording you will see the defendant do nothing but talk about  
18 the Scotch that the patient had just brought him.

19           You will see the defendant deal drugs with his  
20 prescription pad. You will also see the defendant's  
21 prescription data. We will show you the data that pharmacies  
22 collected and reported regarding the staggering amount of  
23 oxycodone that the defendant prescribed over the course of  
24 several years, including to Vito and his crew.

25           It will show you the defendant prescribed hundreds of

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Opening - Ms. Fletcher

1 thousands of oxycodone pills and that oxycodone was the single  
2 most commonly prescribed drug by the defendant by a long shot.

3 You will see the medical records of the so-called  
4 patients. You will see patient files and prescriptions  
5 recovered from the defendant's office. These records will show  
6 you how the defendant prescribed oxycodone for patient after  
7 patient and how the defendant wrote down lies in his patient  
8 charts to conceal his crimes.

9 Finally, you will see pictures and video that law  
10 enforcement took in the defendant's home of the stockpile of  
11 gifts he accepted from patients in exchange for the oxycodone  
12 that they did not need. You will see the bottles and bottles  
13 of Scotch, the boxes of cigars, and the electronic equipment --  
14 the defendant's bounty for prescribing oxycodone to Vito and  
15 the crew.

16 After you have seen and heard the evidence in this  
17 case, you will know exactly what happened here. The defendant  
18 David Taylor was a drug dealer. He doled out thousands of  
19 oxycodone pills to people he knew didn't need them.

20 We will have a chance to speak with you again at the  
21 end of this trial, but between now and then I ask you to do  
22 three things:

23 First, pay close attention to the evidence as it comes  
24 in, the testimony, the recordings, the medical records, the  
25 prescription data;

ibqntay2

Opening - Mr. Carnesi

1           Second, follow Judge Carter's instructions on the law;  
2   And,

3           Third, use your common sense, the same common sense  
4   that you use every day in making important decisions in your  
5   own lives.

6           If you do those three things, listen to the evidence,  
7   follow Judge Carter's instructions on the law, and use your  
8   common sense, the defendant will get a fair trial, and you will  
9   return the only verdict supported by the facts and the evidence  
10   in this case, that the defendant is guilty.

11           THE COURT: Does defense counsel have an opening  
12   statement?

13           MR. CARNESI: Yes, Judge.

14           THE COURT: OK.

15           MR. CARNESI: Good afternoon, ladies and gentlemen.

16           I represent Dr. David Taylor. He is a doctor. He's  
17   been a doctor for a very, very long time. All the finger  
18   pointing and all the names that anybody wants to call him,  
19   we're beyond that now. They made their allegation.

20           If you remember anything in this case, remember just  
21   what the prosecutor said to you, she's going to prove that he  
22   was a drug dealer, that he knew what was happening with those  
23   drugs.

24           Hold her to it, because if you do, you will see what a  
25   sham this case actually is. She talked to you a moment ago

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Opening - Mr. Carnesi

1 about a pharmacist who they made a deal with. He's going to  
2 come in and he's going to testify. The allegation is that my  
3 client, a doctor for over 25 years, sold out his profession,  
4 put himself in this position to go on trial here for cigars and  
5 steaks. Are we serious?

6 What she didn't tell you is the pharmacist who was  
7 part of this, with this character Vito, he made over a million  
8 dollars. Not on things he did with the doctor, but he was  
9 selling bottles of pills to this Vito as soon as they were  
10 being unloaded off the truck.

11 As soon as he could order them, have them delivered,  
12 Vito was there, prescriptions or no prescriptions, and the  
13 pharmacist would just hand him out bottles, \$10 a pill, \$10 a  
14 pill. The prosecutor just told you that the street value,  
15 according to the prosecution, for those pills was about \$20.

16 OK. Let's do the math.

17 If you bought them for 10 and sold them for 20, then  
18 Vito's profit was over a million dollars.

19 But you want to point a finger at my client for steaks  
20 and cigars? Are you serious?

21 What this case is about is very simple, and the  
22 evidence is going to show it, the evidence is going to show  
23 that there were people who took advantage of my client, people  
24 who he thought were doing things for him out of the goodness of  
25 their heart because he might see them on short notice, because

ibqntay2

Opening - Mr. Carnesi

1 in certain instances a woman brought him a bottle of Scotch and  
2 he took off \$20 from the visit charge.

3 You are going to find out not only was he betrayed  
4 this Vito character, he was betrayed my staff in his own  
5 office. He had a receptionist in his office who he put in a  
6 protocol, not required by law, but he put in a protocol to have  
7 his patients tested, to have their urine tested because they  
8 wanted to see, one, that the medication would show up in the  
9 urine, and, two, that they weren't taking any chances. It  
10 sounds pretty reasonable, except the same people came in and  
11 they would bribe the receptionist: Don't test this guy,  
12 fabricate my test. They frustrated every attempt he made to  
13 keep track.

14 Keep an open mind. Listen, we waited a long time to  
15 get to this point. Now it's time to put up and prove it.  
16 Prove it. Put those people on the stand. You listen to them,  
17 and then you decide whether they did what they did for their  
18 own motives, whether patients intentionally went in there and  
19 lied to the doctor, whether patients understood that if they  
20 failed this urinalysis test he was going to throw them out. So  
21 they decided to pay, pay the receptionist to defraud him, to  
22 fake the test.

23 If they believed that he knew what was going on, it  
24 wasn't necessary. If they believed that if they were friends  
25 with Vito they could do anything they wanted, they are not

ibqntay2

Opening - Mr. Carnesi

1 worried about a urine test.

2 Keep an open mind, listen to all the evidence, and  
3 then decide yourselves, because here, here in this courtroom  
4 the only people who can decide what the facts are, what was  
5 right or wrong, is you, the jury, not someone who was paid to  
6 come and give their opinion about whether they are a better  
7 doctor or a different type of doctor than Dr. Taylor. You have  
8 to decide not that question. You have to decide if what she  
9 just said to you, she's proved it, that he's a drug dealer.  
10 And the answer to that is going to be a very loud and  
11 resounding no.

12 Thank you.

13 THE COURT: OK.

14 Government, you may call your first witness.

15 MR. ROOS: Thank you, your Honor. The government  
16 calls Lawrence Montalbano.

17 MR. ROOS: Your Honor, my apologies. Apparently he's  
18 in the security area.

19 THE COURT: While we are waiting, let me just see  
20 counsel at sidebar.

21 (In the robing room)

22 THE COURT: While we are waiting, we might as well  
23 talk about any closing instructions you want to give me at the  
24 end of the day today. I plan on reminding them not to do any  
25 independent research regarding the issues, the parties, or the

ibqntay2

Opening - Mr. Carnesi

1 locations and not to discuss this with anyone.

2 Is there anything else anyone wants me to say to the  
3 jurors today?

4 MR. RODRIGUEZ: No other instructions.

5 MR. CARNESI: No, your Honor.

6 THE COURT: I will ask the jury to get here bright and  
7 early at 9:30 tomorrow. I will have counsel get here at like  
8 9:20 just to sort of avoid any unnecessary bumps into jurors.

9 MR. CARNESI: Sure.

10 THE COURT: All right.

11 Anything else while we are back here?

12 MS. FLETCHER: I expect we may have a couple of issues  
13 to raise with your Honor at the end of the day.

14 THE COURT: OK.

15 MS. FLETCHER: In part relating to doors being opened  
16 in our view. We can raise that after the end of the court day.

17 THE COURT: Does any of that involve this witness,  
18 though?

19 MS. FLETCHER: No.

20 THE COURT: All right. We can deal with it today or  
21 we can deal with it early tomorrow if you want.

22 (In open court)

23 THE COURT: While we are waiting, members of the jury,  
24 my deputy is going to provide you with notepads that you can  
25 use to take notes. These notepads will be collected from you

ibqntay2

Opening - Mr. Carnesi

1 at the end of the day each day. No one is going to read them  
2 through, but we are going to collect them at the end of the day  
3 so that we just keep track of them.

4 Don't let your note-taking become a distraction to  
5 you. I will give you further instructions about note-taking at  
6 the end of the case.

7 (Continued on next page)

Ibq6tay3

1           THE COURT:  Let's take a six and a half minute break.  
2   My deputy needs to get some information and get the contact  
3   information from you.  We might as well do that now and do that  
4   in the robing room -- the jury room.  Follow her lead.  In the  
5   interim, do not discuss this case with anyone else.  See you in  
6   six and a half minutes.

7           (Jury excused)

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1           MR. ROOS: My apologies, your Honor. He was over at  
2 U.S. Attorney's Office. The marshals wouldn't let him go  
3 through the bridge. So they are bringing him through security.  
4 When we last heard a few minutes, they were in the security  
5 line downstairs. One agent is with him.

6           THE COURT: Is this someone who is in custody?

7           MR. ROOS: No.

8           THE COURT: All right.

9           MR. ROOS: He is here now, your Honor. Go figure.

10          THE COURT: All right.

11          (In open court; jury present)

Ibq6tay3

Montabano - direct

1 THE COURT: Please be seated.

2 MR. ROOS: Thank you for your patience. We'll try  
3 this again. The government called Lawrence Montabano.

4 THE DEPUTY CLERK: Please remain standing and raise  
5 your right hand.

6 LAWRENCE MONTABANO,

7 called as a witness by the Government,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ROOS:

11 Q. Good afternoon, Mr. Montabano.

12 Can you hear me?

13 A. Yes.

14 Q. Are you employed?

15 A. Yes.

16 Q. What type of work do you do?

17 A. I drive a -- delivery driver.

18 Q. Where are you a delivery driver?

19 A. Jay's on the Bay and Napolie's Pizzeria.

20 Q. Where are those?

21 A. Staten Island, New York.

22 Q. Directing your attention to February 2018, were you  
23 arrested at that time?

24 A. Yes.

25 Q. What were you arrested for?

Ibq6tay3

Montabano - direct

1 A. Conspiracy to distribute Oxycodone.

2 Q. Can you tell us very briefly what made you guilty of that  
3 crime?

4 A. I conspired with another person to illegally get a  
5 prescription and sell the pills.

6 Q. Who did you conspire with?

7 A. Vito Gallicchio.

8 Q. What types of pills?

9 A. Oxycodone, 30 milligrams.

10 Q. Where did you get the pills, the prescription?

11 A. From Dr. Taylor.

12 Q. Do you recognize Dr. Taylor in the courtroom today?

13 A. Yes.

14 Q. Can you point him out for the jury and identify him with an  
15 article of clothing?

16 A. The gentleman with the gray tie and blue shirt.

17 MR. ROOS: Let the record reflect that the witness is  
18 referring to the defendant, Dr. Taylor.

19 THE COURT: Okay.

20 Q. For how long did you get Oxycodone prescriptions from Mr.  
21 Taylor?

22 A. Over three years.

23 Q. Did you have any sort of medical need for the  
24 prescriptions?

25 A. No.

Ibq6tay3

Montabano - direct

1 Q. Did you have any injury at the time?

2 A. No.

3 Q. Were you in pain at that point when you were receiving the  
4 prescriptions?

5 A. No.

6 Q. How many Oxycodone pills did Dr. Taylor prescribe you per  
7 month when you saw him?

8 A. On average, 150.

9 Q. How many did you take?

10 A. None.

11 Q. So why did you get the Oxycodone prescriptions from Dr.  
12 Taylor?

13 A. To make money.

14 Q. We'll come back to that in a bit. First I want to ask you  
15 some more questions about your background.

16 Mr. Montabano, how old are you?

17 A. 52.

18 Q. Where were you born?

19 A. Brooklyn, New York.

20 Q. Where do you live right now?

21 A. Bayonne, New Jersey.

22 Q. Are you married?

23 A. Yes.

24 Q. Do you have any kids?

25 A. Four children.

Ibq6tay3

Montabano - direct

1 MR. RODRIGUEZ: I am showing just the witness what has  
2 been marked for identification as Government Exhibit 105 A.

3 Q. Mr. Montabano, there should be a picture on the screen.

4 Do you see that there?

5 A. Yes.

6 MR. RODRIGUEZ: The jury should not see the picture.

7 Q. Mr. Montabano, what is this that I am showing you?

8 A. Me.

9 MR. RODRIGUEZ: The government offers, your Honor,  
10 Government Exhibit 105 A and B, which is the corresponding  
11 name.

12 THE COURT: Any objection?

13 MR. CARNESI: No, your Honor.

14 THE COURT: It's in.

15 (Government's Exhibits 105 A and 105 B received in  
16 evidence)

17 MR. ROOS: Can we publish Government Exhibit 105 A for  
18 the jury.

19 This is a test run, folks. Let us know if your  
20 computers are working.

21 MR. ROOS: Ms. Corrado, we can take that down.

22 BY MR. RODRIGUEZ:

23 Q. So, Mr. Montabano, how far did you go in school?

24 A. Eleventh grade.

25 Q. Can you describe generally what you did after school?

Ibq6tay3

Montabano - direct

1 A. I worked on Wall Street.

2 Q. Do you still work on Wall Street?

3 A. No.

4 Q. Why not?

5 A. I was laid off in 2005.

6 Q. What sort of work have you been doing since you left  
7 finance?

8 A. Delivering pizza, etc.

9 Q. I think you told the jury, but where do you work now?

10 A. Jay's on the Bay and Napolie's Pizzeria.

11 Q. Where are those located?

12 A. Staten Island, New York.

13 Q. You testified that you were arrested for your involvement  
14 in a conspiracy to distribute Oxycodone.

15 How did you first get involved in that?

16 A. Through a mutual friend.

17 Q. Who is that mutual friend?

18 A. Vito Gallicchio.

19 Q. Can you describe the events that resulted in your initial  
20 involvement?

21 A. He approached me and offered me to go to a doctor and  
22 obtain a prescription and I agreed.

23 Q. So Vito Gallicchio, do you know him by Mr. Gallicchio or  
24 Vito?

25 A. Vito.

Ibq6tay3

Montabano - direct

1 Q. I am going to use Vito from now on.

2 A. Okay.

3 Q. How did you know Vito?

4 A. I met him at the pizzeria where I worked.

5 Q. Where was that?

6 A. Dileo's Pizzeria.

7 Q. At Dileo's what did he say to you in this initial  
8 conversation?

9 A. I just -- he approached me and told me if I wanted to make  
10 extra money, he could set me up with a doctor.

11 MR. ROOS: Ms. Corrado, can we please show the witness  
12 102 A.

13 Q. Mr. Montabano, the picture in front of you, what is that?

14 A. Vito Gallicchio.

15 MR. RODRIGUEZ: The government offers Government 102 A  
16 and B.

17 THE COURT: Any objection?

18 MR. CARNESI: No.

19 THE COURT: It's in.

20 (Government's Exhibit 102 A and 102 B received in  
21 evidence)

22 MR. ROOS: Can we publish this to the jury.

23 BY MR. ROOS:

24 Q. Now, a moment ago before this exhibit --

25 THE COURT: Do the jurors have it yet?

Ibq6tay3

Montabano - direct

1           You will see a glow.

2       Q.   You mentioned a moment ago that Vito asked if you wanted to  
3       make some money.

4           What did you say in response?

5       A.   Yes.

6       Q.   Why did you say that?

7       A.   Because I needed the money.

8       Q.   When roughly was this?

9       A.   Around June of '14.

10      Q.   Did Vito give you any more specifics about what you needed  
11      to do to make money?

12      A.   No.   He just told me he would set up an appointment at the  
13      doctor and I would have to get into the old office and get a  
14      prescription, bring it to the pharmacy.

15      Q.   When he said "the doctor," was he referring to anyone in  
16      particular?

17      A.   Yes.

18      Q.   Who?

19      A.   Dr. Taylor.

20      Q.   Did you say Dr. Taylor's name?

21      A.   He called him Dr. T.

22      Q.   Now, at this point did you have any type of medical injury  
23      or issue that required a prescription?

24      A.   No.

25      Q.   What, if anything, did Vito tell you about what you needed

Ibq6tay3

Montabano - direct

1 to do then to get a prescription?

2 A. To go to the doctor and tell them that the only thing that  
3 would help me would be Oxycodone, 30 milligrams.

4 Q. And what did Vito say would happen after that?

5 A. He would probably send me for an x-ray and I would have to  
6 go back and obtain the prescription.

7 Q. As far as you are aware is Vito a doctor?

8 A. No.

9 Q. What does he do for a living?

10 A. Nothing.

11 Q. Well, what type of lifestyle does Vito live?

12 A. Pretty good.

13 Q. Why do you say good?

14 A. Cars. He had a nice Corvette. He has a nice house.  
15 Watches, etc.

16 Q. Now, I am going to show you for identification what have  
17 been marked as Government Exhibits 124 A and 124 B.

18 What are we looking at here in 124 A and B?

19 A. Vito's Corvette.

20 Q. How do you recognize them?

21 A. How I do recognize the Corvette?

22 Q. Yes.

23 A. Because I have seen it in his driveway.

24 MR. ROOS: The government offers 124 A and B.

25 MR. CARNESI: No objection.

Ibq6tay3

Montabano - direct

1 THE COURT: That's in.

2 (Government's Exhibits 124 A and 124 B received in  
3 evidence)

4 THE COURT: Let's have a very quick side bar.

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Montabano - direct

1 (At the side bar)

2 THE COURT: We've got all this wonderful technology.  
3 The way that the government's screen is angled, though, some of  
4 the jurors can see.

5 MR. ROOS: Mine or the ones on the table.

6 THE COURT: The ones on the table. They can see the  
7 screens before the stuff is admitted into evidence. It's not a  
8 big deal with this, but that will be a problem later on. So  
9 let's try to angle those screens.

10 MR. ROOS: We will.

11 MR. CARNESI: Good. Thank you.

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Ibq6tay3

Montabano - direct

1 (In open court; jury present)

2 THE COURT: Go ahead.

3 MR. ROOS: If we may publish 124 A for the jury.

4 THE COURT: Okay.

5 BY MR. ROOS:

6 Q. Mr. Montabano, what are we seeing?

7 THE COURT: Hold on a second. There is a delay. You  
8 have to wait for the glow from their screens.

9 Go ahead.

10 Q. What are we seeing in this picture, Mr. Montabano?

11 A. Vito and his Corvette in front of his house.

12 Q. In front of whose house?

13 A. In his driveway. Vito's driveway.

14 MR. ROOS: Can we please see Government Exhibit 124 B.

15 Q. What is this, Mr. Montabano?

16 A. The back of Vito's Corvette.

17 Q. Now, you testified that you don't have an injury; right?

18 A. Correct.

19 Q. What, if anything, did Vito say about what would happen if  
20 Dr. Taylor did not prescribe the Oxycodone?

21 A. He would make a phone call.

22 Q. How do you know that Vito would make a phone call?

23 A. That's what he said.

24 Q. What, if anything, did Vito say you should do if Dr. Taylor  
25 gave you a prescription?

Ibq6tay3

Montabano - direct

1 A. To get -- take it to the pharmacy, fill it, and give him  
2 the pills.

3 Q. Would Vito give you anything in return?

4 A. Yes.

5 Q. What?

6 A. Money.

7 Q. How much money?

8 A. \$1,125.

9 Q. Was he paying you by pill?

10 A. Yes.

11 Q. How much was he paying per pill?

12 A. 750.

13 Q. After Vito told you all this, about the doctor's office,  
14 what did you do next?

15 A. I went -- I made an appointment for the doctor and I went  
16 there.

17 Q. How long after your initial conversation with Vito did you  
18 make an appointment?

19 A. Right away.

20 Q. Did you learn anything from Vito about what he would do  
21 before you went to Dr. Taylor's office?

22 A. Yes.

23 Q. What did you learn?

24 A. He would give them a heads up that I was going.

25 Q. What do you mean by heads up?

Ibq6tay3

Montabano - direct

1 A. I call them and tell them that I am coming in.

2 Q. Who would he call?

3 A. The secretary or assistant.

4 Q. Did there come a time that you went to see Dr. Taylor?

5 MR. CARNESI: Judge, can we have the individual  
6 identified if he knows the name?

7 THE COURT: Hold on. If counsel wishes to ask that  
8 question. If not, you can inquire on that on cross.

9 MR. ROOS: I am happy to ask it.

10 Q. Do you know the name of the person he spoke to.

11 A. I think it was a colored girl that works in the office.

12 Q. Now, did there come a time when you went to see Dr. Taylor?

13 A. Yes.

14 Q. And I am going to show you Government Exhibit 101 A for  
15 identification.

16 What is this?

17 A. That's Dr. Taylor.

18 MR. ROOS: Government offers Government Exhibit 101 A  
19 and B.

20 MR. CARNESI: No objection.

21 THE COURT: That's in.

22 (Government's Exhibits 101 A and 101 B received in  
23 evidence)

24 MR. ROOS: May we publish this to the jury?

25 THE COURT: Yes.

Ibq6tay3

Montabano - direct

1 BY MR. ROOS:

2 Q. Now, when did you first see Dr. Taylor?

3 A. In June of 2014.

4 Q. Do you remember the specific date?

5 A. June 30th.

6 Q. Did you go alone or with someone else?

7 A. I went with Vito.

8 Q. Why did you go with Vito?

9 A. To make me feel comfortable, he came.

10 Q. Where did you see Dr. Taylor for your first visit?

11 A. Victory Boulevard in Staten Island.

12 Q. I am going to show you now what is marked for  
13 identification as Government Exhibit 129.

14 What is this, Mr. Montabano?

15 A. The doctor's office.

16 Q. Does it fairly and accurately portray the doctor's office  
17 as of when you went there in 2014?

18 A. Yes.

19 MR. ROOS: The government offers Government  
20 Exhibit 129.

21 THE COURT: Any objection.

22 MR. CARNESI: No, your Honor.

23 THE COURT: That's in.

24 (Government's Exhibit 129 received in evidence)

25 MR. ROOS: May we publish this to the jury?

Ibq6tay3

Montabano - direct

1 THE COURT: Yes.

2 BY MR. ROOS:

3 Q. Now, can you please describe for the jury your first visit  
4 at Dr. Taylor's office?

5 A. Yes. I went in with Vito. I said to their girl at the  
6 front, I am here. I have an appointment. She said, Have a  
7 seat. Me and Vito sat down. A few minutes after the doctor  
8 came out and called me in.

9 THE COURT: Let's go ahead and take our break for the  
10 day.

11 Members of the jury, I am going to let you go for the  
12 day. Tomorrow you should get here bright and early at 9:30 so  
13 that we can start immediately. We'll go from 9:30 to 12:00.  
14 Bring a snack if you would like. We'll go from 12:30 to 3:00.

15 In the interim do not discuss this case with anyone  
16 else. Do not allow anyone to discuss this case with you.  
17 Don't post anything about this case on any social media. Don't  
18 read anything about this case. Don't do any independent  
19 research about any of the issues, parties or locations in this  
20 case.

21 We'll see you tomorrow morning. Have a pleasant  
22 evening.

23 (Jury excused)

24

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Ibq6tay3

Montabano - direct

1 (In open court; jury not present)

2 THE COURT: Please be seated.

3 Should the witness be excused now?

4 MR. ROOS: Yes, your Honor.

5 THE COURT: Defense counsel, any objection to excusing  
6 the witness?

7 MR. CARNESI: No, your Honor.

8 THE COURT: Is there anything that counsel want to  
9 discuss now?

10 MS. FLETCHER: Your Honor, the government's view as we  
11 previewed during our side bar is that Mr. Carnesi's opening has  
12 in the government's view triggered the door that once opened  
13 should in our view permit the testimony of Witness 1 and  
14 Witness 2.

15 There were a couple of things that Mr. Carnesi argued  
16 in his opening. In particular, he now put before the jury the  
17 notion that his client was taken advantage of by patients, that  
18 patients lied to him about their conditions. He has also put  
19 before the jury the notion that the defendant was not aware of  
20 the urinalysis records related to his patients because his  
21 secretary hid or diverted those records from being reviewed by  
22 him.

23 So Witness 1. The government proposes to call Witness  
24 1 whose name is Michael Montanino, who would as the Court is  
25 aware describe an interaction in which his brother -- both him

Ibq6tay3

Montabano - direct

1 and his brother tested positive for drugs and he discussed with  
2 the doctor the need for both of them to return to the practice  
3 and provide the doctor with gifts in order to make that happen.  
4 That directly rebuts the notion that Mr. Carnesi introduced  
5 that the doctor was not aware that the urinalysis records of  
6 his patients being problematic.

7 The proposed testimony from Witness 2 is similar.  
8 Although, may I have one moment on Witness 2, your Honor?

9 THE COURT: Yes.

10 MS. FLETCHER: Your Honor, Witness 2 you will recall  
11 is the mother of one of Dr. Taylor's patients who had an  
12 addiction problem with Oxycodone and has since died of an  
13 overdose. In light of your Honor's concerns related to her  
14 testimony, the parties have actually entered into a testimonial  
15 stipulation as to what her testimony would be, which we think  
16 addresses any 403 concern or any risk that she is emotional or  
17 cries. Her issues with her son, and in particular  
18 documentation that she recovered from her son's room, would  
19 again rebut the notion that the doctor was being taken  
20 advantage of or being lied to by his patients.

21 THE COURT: Okay. Defense counsel.

22 MR. CARNESI: Judge, I don't think there is any door  
23 opened at all. I mean I think they would like to see a door.  
24 The fact of the matter is the testimony would be pursuant to  
25 this witness's proffer and other witnesses who paid that

Ibq6tay3

Montabano - direct

1 particular witness to either not test or to tamper with the  
2 tests. There were over 50 by her estimate tests involved.

3 THE COURT: Get back to the door. The issue with the  
4 door and the issue of your opening statement talking about him  
5 being betrayed by people and his lack of knowledge of certain  
6 things. Before we deal with Witness 2, let's deal with Witness  
7 1 and what is your position on Witness 1 and why that door  
8 hasn't been opened regarding Witness 1?

9 MR. CARNESI: Because I don't believe I talked about  
10 Witness 1 and I don't believe I said in my opening that he was  
11 defrauded as to all the tests. What I said was he put in  
12 protocols to try and establish whether or not these people were  
13 taking these medications or the time using other things and  
14 that those protocols were frustrated by a person working in his  
15 office. The two things are not mutually exclusive. What they  
16 are talking about is there was a fellow who was tested. I  
17 think he tested positively for another substance. And then the  
18 issue becomes did the doctor decide, okay, I will give him  
19 another chance. That is not what we were talking about. We  
20 were talking about a course of business being conducted by an  
21 employee in his office to cut side deals with patients that  
22 clearly he wasn't aware of.

23 THE COURT: How many more witnesses does the  
24 government have? My sense is that it may make sense for me to  
25 rule on this with a slightly more full record? My sense is

Ibq6tay3

Montabano - direct

1 that to the extent a door has been opened that the door may get  
2 bigger, at least the hole might get bigger and it might make  
3 sense to have a clearer sense of what is going to happen here.

4 Here are my concerns: I have several concerns about  
5 Witness 2, which we discussed before. My concern with Witness  
6 1 is Witness 1 testifying about his brother. I am not sure why  
7 that isn't a little bit cumulative to have Witness 1 testifying  
8 about his brother also being let back into the practice. If  
9 Witness 1 wants to provide testimony about what happened with  
10 him and him being kicked out of the practice and then him  
11 providing this bribe to get back into the practice, then that's  
12 a different thing.

13 Can you tell me what is the bribe that Witness 1 gave  
14 to Dr. Taylor?

15 MS. FLETCHER: It is a boiler.

16 Can I have a moment because I want to make sure I am  
17 correctly delineating.

18 THE COURT: Okay.

19 MS. FLETCHER: Your Honor, at first glance I think  
20 there is no issue with his testimony focusing solely on his own  
21 interactions with the doctor and the fact that he was kicked  
22 out. I have understood there to be some overlap between his  
23 bribe and his brother's bribe that AUSA Rodriguez clarified  
24 that the two of them get kicked out at the same time and they  
25 split the cost of the boiler in an effort to get them both back

Ibq6tay3

Montabano - direct

1 in and they both do get back in.

2 THE COURT: That makes a little more sense. That is a  
3 little more clearer.

4 Let me hear defense counsel's view on this, why the  
5 door to that testimony hasn't been opened by your opening  
6 statement talking about how he was betrayed by his patients and  
7 betrayed by his staff and this is not about a doctor who may  
8 have a different standard of practice than some other doctor  
9 and why that doesn't open the door to that sort of testimony.

10 MR. CARNESI: Judge, I don't believe it does. As I  
11 said I don't think the two things are mutually exclusive. It  
12 almost proves the first point. Because when the test came  
13 back, he did take the step to kick him out. That he decided to  
14 give him another chance and let him back in, that's a whole  
15 other issue. It doesn't say that he was ignoring the test. It  
16 just says, okay, he partied and he did something that he should  
17 not have done and we decided to give him another chance. It  
18 doesn't vitiate the fact that we did put in this protocol.

19 THE COURT: That is an argument you can make. The  
20 government's theory that he gave him the other chance because  
21 he got a bribe. Maybe he was also being benevolent as well but  
22 also because he got a bribe, which seems to contradict the  
23 position that you took in your opening statement about his  
24 being betrayed by his clients. I think you said something  
25 about patients giving gifts to their doctor or something. I

Ibq6tay3

Montabano - direct

1 believe, but maybe I am conflating.

2 MR. CARNESI: I am sorry.

3 THE COURT: I think you might have said something  
4 today about there is something wrong with patients giving gifts  
5 to their doctor.

6 MR. CARNESI: I did speak to the idea that he received  
7 gifts and in return he moved up an appointment. He charged  
8 less for a particular visit.

9 THE COURT: Right. That seems a little bit different  
10 than getting a boiler to let someone who has got allegedly a  
11 drug addiction get back into the practice to get the same drug  
12 that they are addicted to. That does seem that that is  
13 different and that that door has been opened. I will think  
14 about this some more. My sense is that there may be more of  
15 this coming as the trial goes. If this portal might be bigger  
16 than we currently anticipate and it seems that it may make  
17 sense because I think the government has a lot of other  
18 witnesses to call before we get to this for me to fully  
19 understand all of the parameters of the upside down before  
20 making a ruling on this.

21 MS. FLETCHER: On that point, your Honor, we would  
22 anticipate calling Mr. Montanino the day after tomorrow.

23 To address your Honor's point about the number of  
24 other witnesses, there is a key difference between Mr.  
25 Montanino and some of the other witnesses who will testify

Ibq6tay3

Montabano - direct

1 here. Much of the communications between many of our other  
2 witnesses regarding Dr. Taylor relate -- are communications  
3 that those witnesses had with Vito in which Vito is telling  
4 those witnesses, I am doing this for the doctor. If you do  
5 this for the doctor, he will bring you up in the line or he  
6 won't ask questions. For Mr. Montanino this is a conversation  
7 that is directly with the doctor. There is no ability to argue  
8 that there was an intermediary who was misleading Dr. Taylor.

9 THE COURT: I will think about it. I am leaning  
10 toward at this point to allowing this testimony. Certainly I  
11 am leaning towards allowing this testimony for Mr. Montanino  
12 regarding this boiler payment. If we can parse out something  
13 regarding the brother, that is one thing. If it cannot be  
14 parsed out fairly, I suppose we'll deal with that later.

15 In terms of Witness 2, I still have some grave  
16 concerns about that. can I guess a sense of what this  
17 stipulation is that was reached between the parties if this  
18 information comes in?

19 MS. FLETCHER: If your Honor would like, I can hand up  
20 the stipulation. It is not long.

21 THE COURT: That's great.

22 MS. FLETCHER: The only thing that will not be clear  
23 from the face of that is the contents of the exhibits that are  
24 referenced, but I am happy to speak to those when your Honor is  
25 finished reading it.

Ibq6tay3

Montabano - direct

1 (Pause)

2 THE COURT: Let me hear more from the government  
3 regarding 302, this prescription for Oxycodone issue  
4 April 21st. You don't have to be that specific. Let me get  
5 from you again what it is that you are trying to get out here.

6 MS. FLETCHER: What is the point of all this, your  
7 Honor?

8 THE COURT: Yes.

9 MS. FLETCHER: So the point is this: James  
10 Impellizine was a patient of Dr. Taylor. His chart had an  
11 indication that he had some injury. He was prescribed very  
12 large amounts of Oxycodone over a lengthy period of time.  
13 There was a point in time when he was a patient of Dr. Taylor  
14 that he -- that he went into a rehab facility. In connection  
15 with going into that rehab facility, Dr. Taylor sent a letter  
16 to Mr. Impellizine's job explaining that he wasn't treating him  
17 for some injury, he was treating him for opioid addiction. So  
18 Impellizine goes.

19 Into this rehab facility and some time later he exits  
20 the rehab facility and he resumes seeing Dr. Taylor and Dr.  
21 Taylor prescribes him I believe it is even larger amounts of  
22 Oxycodone over a sustained period of time. So again what this  
23 evidence does is shows that the doctor knows that he is  
24 prescribing Oxycodone to patients who don't have a medical need  
25 for the Oxycodone and it is the -- the letter itself is clear

Ibq6tay3

Montabano - direct

1 evidence of his knowledge that this person doesn't have an  
2 injury. He has an opioid problem.

3 THE COURT: What I need a little bit of clarification  
4 on is this letter that you have been referring to that I see in  
5 front of me indicates is a letter from Dr. Taylor that  
6 Mr. Impellizine was treated from Dr. Taylor from June 13th,  
7 2012, to August 14th, 2012, for opioid dependency and  
8 self-reported abuse prescription of opioids. He was not  
9 treated for cervical disk disease. It was not related to an  
10 accident or injury due to employment. This is not a Workman's  
11 Comp case. If you have any questions, please notify our  
12 office.

13 And then as you indicate in the stipulation that after  
14 that on or around September 14th, 2012, Mr. Impellizine was  
15 referred for an MRI for his cervical spine, which showed that  
16 he had myo bilateral narrowing of a disk, which according to  
17 this I don't know if this is true or not, but this seems that  
18 now there is an issue with the cervical spine which is  
19 different than the context that this letter was talking about  
20 some two years earlier. Now there is an issue with the  
21 cervical spine and now Dr. Taylor is prescribing Oxycodone.  
22 Maybe that is not a good idea to prescribe that for someone who  
23 has this sort of substance abuse pendency.

24 It seems as if in the way that this is labeled that  
25 this is related to cervical spine injury, which is different

Ibq6tay3

Montabano - direct

1 than that letter. So at least in terms of the point that you  
2 are trying to make seems to me that there is something -- that  
3 there is a gap there that is significant.

4 MS. FLETCHER: We expect that the expert will fill  
5 that gap, Judge. So we anticipate that Dr. Gharibo will  
6 explain what the condition is that is referenced in the  
7 referral for the MRI or the results for MRI and will say that  
8 is not a condition that will justify the prescription of  
9 Oxycodone that was provided to this particular patient.

10 He will also opine on risks associated with  
11 prescribing not just the Oxycodone to this particular patient  
12 but the other drugs that Dr. Taylor was also prescribing to the  
13 same patient at the same time. So in a nutshell and Dr.  
14 Gharibo was not my witness but AUSA Roos will correct me if I  
15 am wrong will say that he didn't have an injury. The letter  
16 demonstrates that he did not have an injury.

17 THE COURT: In 2010?

18 MS. FLETCHER: Correct, in 2012.

19 The later MRI does not show an injury that would  
20 justify this amount of Oxycodone. The government would argue  
21 taking those two things into account and taking into account  
22 the doctor's knowledge that this person has an opioid  
23 dependency issue, that he is departing from the course of  
24 professional medical conduct when he after this person exits  
25 rehab prescribes him large amounts of Oxycodone and large

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Montabano - direct

1 amounts of Xanax, which we will not put before the jury but in  
2 the government's view will lead to this person's overdose  
3 death.

4 THE COURT: Is there evidence that the decedent gave  
5 Dr. Taylor a bribe as well or no?

6 MS. FLETCHER: No. Not aware of one, no. Apart from  
7 cash payments for office visits, which I think were common to  
8 all the patients.

9 I misspoke. Some of his office visits were paid for  
10 by insurance.

11 THE COURT: Okay. I will think about this. It does  
12 seem that Witness 2 in terms of the doors that perhaps were  
13 opened, I don't think this door was opened in terms of what you  
14 were trying to get out of this stipulation testimony. This  
15 does seem to be that now we're starting to get into whether or  
16 not it was a good idea to give someone Oxycodone for this  
17 particular cervical spine injury. Obviously there is the issue  
18 of this person having a prior opioid addiction, but this seems  
19 very different than what we're talking about with Witness 1 in  
20 terms of being consistent with your theory that he is getting  
21 bribes for giving medically totally medically unnecessary  
22 prescriptions. This seems as if perhaps there is a judgment  
23 call that could be made as to whether or not this was  
24 appropriate.

25 Certainly that link of any kind of bribe here is

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Montabano - direct

1 missing. This does seem as if this is extremely prejudicial.  
2 Again, while the stipulation does take some of this out of  
3 here, I am not even sure why we need to have any proffered  
4 testimony from this mother at all. To the extent that your  
5 point would be that this person that Dr. Taylor wrote a letter  
6 to a rehab facility indicating that he believed that this  
7 person suffered from opioid addiction, and did you have a  
8 prescription later on two years later or four years later,  
9 indicating that he is prescribing Oxycodone to that person, I  
10 am not sure why you need this mother's testimony to make that  
11 point.

12 Again, my other concern is that point I think doesn't  
13 really correspond to this issue of a door being opened. I am  
14 not sure this point is a 404(b). This is something that is  
15 prejudicial but not particularly probative of anything in this  
16 case.

17 MS. FLETCHER: Your Honor, I think we're happy to take  
18 this up as more evidence comes in. The government's view is  
19 that this evidence is relevant to the defendant's knowledge and  
20 that he is not being duped by his patients into prescribing the  
21 medically unnecessary Oxycodone. He believes it is necessary.  
22 This is proof or at least -- and the Court can question the  
23 probative value of the proof, but it is at least proof there  
24 are instances where is he prescribing Oxycodone not because of  
25 a medical condition but because the person has a Oxycodone

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Montabano - direct

1 addiction.

2 THE COURT: That does seem like a different issue and  
3 different potential crime than what we're talking about here in  
4 terms of this door being opened.

5 Does defendants counsel want to be heard on that?

6 MR. CARNESI: No, your Honor.

7 THE COURT: Anything else we need to discuss today?

8 MS. FLETCHER: So as we previewed earlier today, your  
9 Honor, there is some scheduling issue with Dr. Gharibo.  
10 Actually, I think this makes more sense for AUSA Roos to talk  
11 about it. He raised a point now that the fact that Dr. Gharibo  
12 will also testify about Michael Montanino, Witness 1. So even  
13 though Montanio is not going to be a witness soon, this issue  
14 with respect to Witness 1 may present itself earlier than  
15 indicated.

16 MR. ROOS: Your Honor, Dr. Gharibo sees patients and  
17 he is fully scheduled on Wednesday and early Thursday morning,  
18 which is a conflict he raised with us when we required about  
19 the move. He can testify tomorrow. He also has Thursday  
20 afternoon and Friday available. We were looking at ways to  
21 move it around. The concern we want to cut off is I think his  
22 direct is lengthy. It may be three hours. Say we start it  
23 tomorrow, there are two potential issues. One is we hit 3:00  
24 and defense counsel is in the middle of crossing Dr. Gharibo  
25 and he cannot come back on Wednesday. Another is one that AUSA

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Montabano - direct

1 Fletcher just raised and that is Dr. Gharibo is going to opine  
2 on the various patients that were seen. So to the extent Mr.  
3 Montabano is allowed to testify, Dr. Gharibo would do a  
4 corresponding review of his medical chart. So in terms of  
5 sequencing, it is important to have a decision at least on  
6 whether or not that person will testify at all so that Dr.  
7 Gharibo's testimony can be adjusted accordingly.

8 The other option is of course we put him Thursday  
9 afternoon and we'll have to move some people around and so it  
10 is possible there could be a -- I don't know if the Court will  
11 entertain a late start one day or early ending. End with the  
12 witness and Dr. Gharibo would be next on Thursday afternoon.  
13 It is not a clear request, but I wanted to raise those  
14 complications around the scheduling issue.

15 (Continued on next page)

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Ibqntay4

1           THE COURT: OK. It seems to me that we could  
2 certainly juggle some things around if we need to. It seems  
3 that, based on what you have said, it may make sense for the  
4 government's expert, he can start certainly Thursday afternoon  
5 and finish up Friday. It seems that that would work. I am not  
6 sure that -- your concern with Montanino's testimony as it  
7 relates to the expert is what exactly?

8           MR. ROOS: Your Honor, for instance, like I said  
9 tomorrow would be the other possibility for the expert. The  
10 expert is testifying about his review of Montanino's records,  
11 and Montanino is ultimately not a part of the case. There will  
12 be a disconnect there.

13           I mean, for instance, the letters that AUSA Fletcher  
14 was referencing are in Michael Montanino's medical file that  
15 was seized that the expert is going to review. So, you know,  
16 having clarity on at least whether there will be any testimony  
17 from Michael Montanino is sort of relevant before Dr. Gharibo  
18 testifies. The same seem would go for James Impellizine -- my  
19 apologies, your Honor.

20           THE COURT: It seems to me, again, that the issue with  
21 Michael Montanino, as I ruled before, was perhaps this coming  
22 in as 404 evidence if a door gets opened. If that door gets  
23 opened, then certain evidence is admissible to sort of correct  
24 any sort of misimpressions that may have been made by in this  
25 case defense counsel. That doesn't necessarily mean it opens

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1 up everything that possibly concerns this witness.

2 I am not sure why this expert -- I understand why you  
3 would like it, but I am not sure why this expert's testimony  
4 regarding Montanino is all that probative when this expert is  
5 going to be talking about other purported patients who are part  
6 of the actual conspiracy.

7 The information about Montanino that may be coming in  
8 would be the information to rebut defense counsel's claim about  
9 his client being duped and being betrayed and this sort of  
10 thing. I don't think that the door has been opened to all of  
11 that, to now allowing this expert to go and talk about whether  
12 or not this was medically necessary.

13 I think that with Montanino, if this evidence comes in  
14 that he was kicked out of the practice along with his brother  
15 and they bought Dr. Taylor a boiler to get back into the  
16 practice, that creates or that cures the harm that was done to  
17 the government by me not allowing them to put some of that  
18 evidence in and by defense counsel making some statements that  
19 may be misleading to the jury if that isn't cured in some way.

20 I think that my inclination is that, no, I don't think  
21 that the door gets opened to now having this expert talk about  
22 Montanino, because it does also seem very cumulative. This  
23 expert is going to be talking about these other potential  
24 patients. Again, the issue is, it's curing the harm that may  
25 have been done based on defense counsel's opening.

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1           MR. ROOS: Yes, your Honor. As I mentioned, just in  
2 terms of the pure scheduling question, I think our two options  
3 are the expert tomorrow, although then he might run later, or  
4 else Thursday to Friday. Would your Honor entertain keeping  
5 the jury a little late tomorrow to allow them to finish? I  
6 know now we are raising this after they've left for the day,  
7 but I am thinking about, if he were to be testifying tomorrow,  
8 a way to sort of get him off the witness stand.

9           THE COURT: What do you mean if he testifies tomorrow  
10 get him off the witness stand?

11          MR. ROOS: Because we end at 3, and he can't appear on  
12 Wednesday, there would be sort of this issue of what -- does he  
13 come back Thursday afternoon?

14          THE COURT: He could. That's why tomorrow doesn't  
15 seem like a great idea anyway. Also, I am not sure why he  
16 needs a three-hour direct. That seems a little long, and it  
17 may not be particularly riveting for a jury to listen to this  
18 expert go through charts for three hours.

19          MR. ROOS: Certainly. If we are taking out Michael  
20 Montanino, we will at least shrink it a little bit.

21          Thank you, your Honor. We will look at the schedule  
22 and figure out what is appropriate.

23          THE COURT: Anything else from defense counsel on  
24 this?

25          MR. CARNESI: No, your Honor.

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1 THE COURT: Anything else?

2 MS. FLETCHER: Your Honor, just, if we don't call  
3 Dr. Gharibo tomorrow, I expect that we will call Detective Del  
4 Rosario, who is sitting here.

5 THE COURT: OK.

6 MS. FLETCHER: Based on my earlier conversations with  
7 Mr. Carnesi, it appears that Mr. Carnesi is going to try to  
8 elicit the statements made by Denise Suarez through Detective  
9 Del Rosario. Those statements in the government's view will be  
10 far beyond the scope of Detective Del Rosario's direct  
11 examination. We are really only calling him for the purpose of  
12 introducing several recordings that were prepared by  
13 confidential sources.

14 So I think in order to avoid having issues tomorrow  
15 where we're arguing on the fly about what exactly is within the  
16 scope of his testimony, the government would benefit from a  
17 proffer from Mr. Carnesi as to what specific statements made by  
18 Ms. Suarez to the government that he intends to elicit through  
19 Detective Del Rosario.

20 We will also inform your Honor, to the extent that  
21 he's eliciting only statements, it will inform what we will  
22 seek to elicit and perhaps need to raise with your Honor in the  
23 morning.

24 THE COURT: All right. Let's do this. Why don't we  
25 get counsel here at 9 o'clock tomorrow, and we can hash some of

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1       them out. To the extent that the government is now making a  
2       motion to preclude certain cross-examination, counsel for the  
3       government, get me a letter brief by 7:30 this evening.

4               And, defense counsel, if you have any response, can  
5       you get that to me by 9:30 this evening?

6               MR. CARNESI: I will take a look at it, Judge.

7               THE COURT: All right.

8               MS. FLETCHER: Your Honor, to be clear, I am not sure  
9       we are actually going to be moving to preclude, but we won't  
10      know.

11              THE COURT: What you are asking now -- this is what I  
12      get concerned about, especially at the end of the day -- you  
13      are asking Mr. Carnesi to give you a proffer which he hasn't  
14      given you before. Then you are going to respond, he's going  
15      respond, and we're all kind of free styling here at the end of  
16      the day. I don't think that it is going to get me much clarity  
17      without actually looking at the proffer statement and looking  
18      at these documents.

19              So, if nothing else, I understand you may not want to  
20      write some letter briefs this evening, but perhaps if the  
21      parties just give me a joint status report. How about that?

22              MS. FLETCHER: Sure.

23              THE COURT: At 8 o'clock p.m. So the parties can  
24      discuss this amongst themselves. If there is agreement, fine;  
25      if not, that's fine, too. But also just draw my attention to

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1 the proffer notes so that we can deal with it.

2 MS. FLETCHER: We are hopeful that we can work it out.

3 THE COURT: All right.

4 But let's get counsel here at 9 o'clock a.m. in any  
5 event just to make sure we can deal with any issues that have  
6 come up.

7 MS. FLETCHER: OK.

8 THE COURT: All right. Have a good evening.

9 (Adjourned to November 27, 2018, at 9:00 a.m.)

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